

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 570

[Docket No. FR-4556-P-01]

RIN 2506-AC04

## Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement section 588 of the Quality Housing and Work Responsibility Act of 1998 by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Section 588 prohibits State and local governments from using CDBG funds for "job pirating" activities that are likely to result in significant job loss. Job-pirating, in this context, refers to the use of CDBG funds to lure or attract a business and its jobs from one community to another community.

**DATES:** *Comments Due Date:* December 26, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Richard Kennedy, Office of Block Grant Assistance, Room 7286, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3587 (this is not a toll-free number).

In addition, program participants may contact their respective program offices by calling the applicable telephone number listed below (these telephone numbers are not toll-free).

*For State CDBG recipients:* Steve Johnson, Director, State & Small Cities Division, (202) 708-1322.

*For Entitlement Communities:* Sue Miller, Acting Director, Entitlement Communities Division, (202) 708-1577.

*For Section 108, EDI, and BEDI program participants:* Paul Webster, Director, Office of Community and

Economic Development Finance, (202) 708-1871.

Hearing- or speech-impaired individuals may access any of the telephone numbers listed in this section by calling the toll-free Federal Information Relay Service at (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Statutory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) (referred to as the "1974 HCD Act") establishes the statutory framework for the Community Development Block Grants (CDBG) Program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled "Community Development Block Grants").

Section 588 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105-276, approved October 21, 1998) amended section 105 of the 1974 HCD Act (42 U.S.C. 5305). Specifically, section 588 added, at the end of section 105, a new subsection (h) entitled "Prohibition on Use of Assistance for Employment Relocation Activities." This new subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another if the relocation is likely to result in significant job loss.

New subsection (h) reads as follows:

(h) Prohibition on Use of Assistance for Employment Relocation Activities.—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

#### II. This Proposed Rule

This proposed rule would implement new subsection 105(h) of the 1974 HCD Act by revising HUD's CDBG program regulations at 24 CFR part 570. The proposed rule would establish a new § 570.210 (entitled "Prohibition of use of assistance for employment relocation activities"), which would describe the CDBG job-pirating prohibitions. These anti-pirating provisions would also be incorporated in subpart I of the part 570 regulations. Subpart I describes the policies and procedures governing the State-administered CDBG program. Specifically, the proposed rule would revise § 570.482 (entitled "Eligible

activities") to describe the job-pirating provisions for the State-administered CDBG program. The anti-pirating provisions described in § 570.482 would be parallel to those found in proposed § 570.210.

#### III. Significant Features of the Proposed Rule

*A. Covered programs.* This proposed rule would apply to the CDBG program. In addition, the proposed rule would also apply to the Section 108 Loan Guarantee program, the Economic Development Initiative (EDI) program, the Brownfields Economic Development Initiative (BEDI) program, and CDBG assistance to Insular Areas. HUD has decided to include these additional programs in the coverage of the proposed rule since they all provide assistance for economic development activities authorized by the CDBG program.

*B. Direct assistance to for-profit businesses.* Section 105 of the 1974 HCD Act authorizes the provision of direct CDBG assistance to for-profit businesses. Specifically, subsection 105(a)(17) authorizes CDBG recipients to provide direct assistance to for-profit businesses for economic development activities. Additionally, subsection 105(a)(15) authorizes recipients to provide CDBG funds to Community-Based Development Organizations (CBDOs) for economic development activities that increase economic opportunities, or that stimulate or retain businesses or permanent jobs. CBDOs may carry-out economic development activities directly or they may assist for-profit businesses similar to the way CDBG recipients assist for-profit businesses.

New subsection 105(h) targets CDBG assistance to for-profit businesses. In accordance with the statutory language of new subsection 105(h), the proposed rule would prohibit the provision of CDBG assistance to for-profit businesses (including business expansions) under subsections 105(a)(15) and 105(a)(17) of the 1974 HCD Act, if:

(1) The funding will assist in the relocation of a plant, facility, or operation; and

(2) If the relocation is likely to result in a significant loss of jobs in the area from which the relocation occurs.

As noted, HUD proposes to apply the job-pirating prohibition rule to those business expansions that result in the relocation of all or a portion of an operation to the expansion site, if the relocation would result in a significant loss in the number of jobs at the current facility. When a business expands to a site outside of its current labor market

area, the expansion may or may not involve a relocation of a product line or jobs. HUD specifically invites public comment on whether the anti-pirating prohibitions should apply to CDBG-assisted business expansion activities that may or may not have the potential for future job relocation. HUD also invites public comment on whether this proposed rule might have an impact on the expansion of electronic commerce on the internet and, if so, any suggestions for addressing such impact. Finally, while this proposed rule is directed to CDBG assistance made available to for-profit businesses that might relocate from one labor market area to another, the statutory provision does not specifically identify for-profit businesses, *per se*. In that regard, while there is the potential that some not-for-profit businesses may have fairly substantial levels of employment and might have the potential for business relocation and job loss, HUD believes that the likelihood of CDBG assistance to a not-for-profit business relocation is limited. HUD invites comments on its decision to limiting this rule to for-profit businesses.

C. *Infrastructure improvements.* In the development of this proposed rule, HUD also considered how new subsection 105(h) applies to CDBG recipients that provide assistance *indirectly* to for-profit businesses. This indirect assistance may take the form of infrastructure improvements (such as water and sewer lines, utilities and roadway improvements) as well as buildable sites, rail spurs, and other amenities in industrial parks. State and local CDBG recipients may also facilitate businesses indirectly through the development of business incubator buildings. The development of business incubator buildings indirectly assists for-profit businesses through the provision of reduced rents, shared administrative services, etc.

CDBG recipients may carry out these activities under subsection 105(a)(14) of the 1974 HCD Act, as well as subsections 105(a)(1), (2), (4), or (7), which govern the use of CDBG funds for acquisition of real property, public facilities improvements, clearance, demolition, and disposition of real property. A recipient may use these provisions to assist a business in relocating from one area to another.

This proposed rule provides that, when a CDBG recipient enters into a written agreement with a business to fund any of the activities described

above in consideration for the relocation of the business, this is equivalent to providing direct assistance to the business. Accordingly, the proposed rule would apply. HUD specifically invites public comment on whether the anti-pirating prohibitions of this proposed rule should apply to infrastructure and other indirect CDBG assistance.

D. *Definition of "Operation".* New subsection 105(h) prohibits the use of CDBG assistance to assist in the relocation of any industrial or commercial plant, facility, or "operation" from one area to another area. This proposed rule would define the term "operation" to include any equipment, position, employment opportunity, production capacity or product line. HUD specifically solicits public comments regarding this proposed definition of the term "operation."

E. *Definition of "Area".* The statutory language of new subsection 105(h) prohibits the relocation of any industrial or commercial plant, facility, or operation, from "one area to another," if the relocation is likely to result in significant job loss. HUD proposes to interpret the phrase "area" to be synonymous with the term "Labor Market Area (LMA)," as defined by the U.S. Bureau of Labor Statistics (BLS). The BLS defines an LMA as:

(a) an economically integrated area within which individuals can live and find employment within a reasonable distance or can readily change jobs without changing their place of residence.

HUD believes that the BLS definition is the most logical one to use, for two reasons:

- (1) It ensures consistency of definitions and data across the country; and
- (2) It enhances consistency of approach among Federal programs.

These are important considerations because potentially affected projects may involve a business relocating from one type of market area to a very different type of market area in a different region of the country. In addition, assembling financing for economic development projects often involves combining funding from multiple Federal programs or agencies.

LMAs include metropolitan statistical areas (MSA) and primary metropolitan statistical areas (PMSA), defined by the Office of Management and Budget, and small labor market areas. The proposed

rule would be applicable to moves from one LMA to another, regardless of the type of area (e.g., from an MSA to a PMSA, or from an MSA to a small labor market area, etc.) or the type of CDBG grantee providing assistance (e.g., entitlement, non-entitlement, or State). For example, moving a business from the City of Denver (located in the Denver, CO MSA) to Adams County, CO (also located in the Denver, CO MSA) would not be subject to the anti-pirating provisions of this proposed rule since both Denver and Adams County are located in the same LMA.

HUD specifically invites public comments on the appropriateness of using the BLS definition of LMA for purposes of this rulemaking.

F. *Determining "significant job loss".* As noted above, new subsection 105(h) prohibits CDBG assistance for business relocation activities that "will result in a significant loss of employment" in the LMA from which the relocation occurs. This proposed rule would require that a CDBG grantee, in determining whether a significant job loss would occur, collect labor force statistics for the LMA where the business is located *before* the relocation occurs. As proposed in this rule, the CDBG grantee would also be required to document the number of jobs that the business plans to relocate to the new LMA.

Annual unemployment rates for metropolitan areas are reported to the nearest .1 percent (.001). Unemployment statistics for States and non-metropolitan areas also suggest that State unemployment rates vary between 0.1 percent and 0.9 percent. (Source: Bureau of the Census, *Local Area Unemployment Statistics*, Table 1—Civilian labor force and unemployment by state and metropolitan area, 1998–99.) This proposed rule would provide that a business relocation results in a "significant job loss" when the number of displaced jobs equals one-tenth percent or more of the total number of jobs in the LMA from which the relocation occurs.

The following example, provided in chart form, illustrates the factors that a CDBG grantee would be required to consider in determining whether a business relocation would result in a significant job loss. In the example, a city has proposed funding a business that plans to relocate from any of the following areas. The business plans on relocating on July 1 and the move would result in the relocation of 50 jobs.

## EXAMPLE OF CALCULATING SIGNIFICANT JOB LOSS

| (A)<br>CDBG grantee/name of labor market area (LMA)<br>Area where business is currently located | (B)<br>Number of persons in labor force in area where business is currently located (June 1999) | (C)<br>One-tenth percent of labor force<br>Multiply column (B) by .001 | (D)<br>Number of jobs leaving the area<br>Must be less than number in column (C) to be eligible for assistance |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Chattanooga, TN<br>Chattanooga, TN-GA MSA                                                       | 219,709                                                                                         | $219,709 \times .001 = 219.709$                                        | 50 Not Prohibited.                                                                                             |
| Logan, NE<br>Lincoln-Logan-McPherson SLMA                                                       | 19,714                                                                                          | $19,714 \times .001 = 19.71$                                           | 50 Prohibited.                                                                                                 |
| Jefferson County, CO<br>Denver, CO PMSA                                                         | 1,162,479                                                                                       | $1,162,479 \times .001 = 1,162.48$                                     | 50 Not Prohibited.                                                                                             |

(MSA: Metropolitan Statistical Area)  
(PMSA: Primary MSA)  
(SLMA: Small LMA)

Labor force statistics are provided monthly and annually for each LMA. Labor force data may be obtained from the BLS web site at <http://www.bls.gov/lauhome.htm>. CDBG grantees may also write to their State employment statistics contact person to receive local employment data. A list of State employment statistics contact names is provided at the following Internet address: <http://www.bls.gov/ofolist.htm>. To obtain a list of LMAs or for questions regarding local area unemployment statistics, contact the BLS Local Area Unemployment Statistics Division by calling (202) 606-6392 or e-mail the Division at the following address: [lausinfo@bls.gov](mailto:lausinfo@bls.gov).

Even in large LMAs, however, a one-tenth of a percent job loss of the total labor market may constitute a large number of employees. Therefore, this proposed rule provides that in all cases a loss of 500 or more jobs will be considered to constitute a significant job loss. HUD specifically solicits public comments on the use of labor force data and the impact of the .1 percent and the 500 jobs threshold for determining significant job loss.

#### IV. Activities and Businesses Exempt From the Job Piracy Prohibition

A. *General.* This proposed rule would not apply to any of the following:

- (1) Relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended, (42 U.S.C. 4601-4655) (implemented by HUD at 24 CFR part 42) and by the CDBG regulations at §§ 570.488 and 570.606;
- (2) Start-up businesses;
- (3) Microenterprises; and
- (4) Assistance to businesses that buy equipment and/or inventory in arms-length transactions and move the

equipment and/or inventory to another area.

B. *Relocation assistance.* HUD proposes to exclude relocation assistance required to be provided to a business under the URA. Businesses that receive such assistance and are required to relocate generally are not voluntarily relocating. HUD does not believe that the anti-pirating provisions were intended to prevent businesses that are forced to relocate as a result of a government action covered by the URA from relocating to another area.

C. *Start-up businesses and microenterprises.* HUD considered whether start-up businesses and microenterprises should be subject to the job-pirating restrictions, but has determined that these types of business were not the intended targets of the statutory prohibition. Such businesses generally have five or fewer employees and typically do not seek resources to relocate jobs to other areas.

D. *CDBG-assisted arms length transactions.* The exemption for businesses that buy equipment and inventory in arms length transactions is meant to protect assisted businesses that simply purchase equipment and inventory that are located in one area and move them to a new location. The job piracy prohibition targets businesses that move *existing* operations from one labor market area to another.

This proposed rule would apply to CDBG assistance to a business that: (1) Shuts down or downsizes a facility and sells the equipment in a non-arms length transaction (an example of a non-arm's length transaction is a firm selling equipment to a subsidiary); or

(2) Sells, in an arms length transaction, an interest in an existing business, product line, customer base or the entire stock-in-trade and goodwill of an existing business.

This proposed rule would not apply to assistance to a business that only purchases used equipment in an arms length transaction. HUD believes that the sale and purchase of equipment, inventories, or other business assets on the open market were not intended to be included under the business relocation provisions of new subsection 105(h).

The following examples illustrate the applicability of this proposed rule to the sale of business equipment and inventory:

*Example 1:* A city provides CDBG assistance to a business for the purchase of equipment. The business will purchase the equipment through a used equipment broker. The equipment is currently owned by a firm that is downsizing. Upon purchase of the equipment, the new owner will move the equipment to another State from where the equipment is currently located.

*Example 2:* A city provides CDBG assistance to a firm that intends to buy the product line of a business and to relocate the entire product line to another LMA.

In both cases, HUD would examine the following:

- (1) Will the CDBG assistance directly assist in the relocation of the business?
- (2) Will the relocation result in significant job loss?

*Example 1:* In the first example, the CDBG assistance did not trigger the relocation of the equipment, nor was the relocation of the equipment related to any loss of jobs. The current equipment owner's decision to downsize, regardless of another business' subsequent purchase of equipment and inventory, was the reason for the job loss in this example. The use of CDBG funds to purchase equipment in an arms-length transaction such as this would not be prohibited under this proposed rule.

*Example 2:* In this example, the CDBG assistance would directly assist the move of an operation from one LMA to another. The proposed rule would prohibit this assistance if the relocation of the product line is likely to result in significant job loss in the LMA from which the proposed relocation would occur.

HUD specifically invites comments on what forms of sale or transfer of a business' assets should be covered by the anti-pirating provisions of this rule.

#### V. Documentation Requirements for CDBG Recipients and Businesses

This proposed rule would require that for each CDBG assisted business covered by this proposed rule that the recipient's CDBG project file must document the following: whether or not the business has a plant, facility or operation in a LMA outside of the recipient's LMA; and if the business has one or more plants, facilities or operations located in other LMAs, the location and number of employees at each such plant, facility or operation. Prior to a decision to provide CDBG assistance to a business that has a plant, location or facility in other LMAs, the recipient shall document whether the number of workers employed by the business at each of the locations would constitute a significant job loss as proposed in this rule. If the recipient decides to commit CDBG assistance to a business (whether directly or indirectly), the grantee must require and obtain, as a condition for assistance, a certification from the assisted business that neither it, nor any of its

subsidiaries, has plans to relocate jobs at the time the agreement is signed. The business must provide this certification to the grantee as a part of the agreement committing CDBG assistance to the business. Further, the agreement must provide that, in the event the CDBG assistance results in a business relocation subject to this proposed rule, the business will reimburse the CDBG recipient for any assistance (with interest) provided to, or expended on behalf of, the business.

The purpose of this certification is to prohibit businesses, especially those with similar facilities/operations in other LMAs, from using CDBG assistance to establish a new facility with the intent of subsequently relocating existing operations to the new facility. If the business plans to relocate jobs, then it would be required to certify as to the number of jobs at the current facility, and the number of those positions that would be relocated once the CDBG assisted facility was fully operational. If the number of jobs to be relocated exceeds the threshold for significant job loss, CDBG assistance could not be provided.

HUD solicits public comments on the documentation required to be collected

and maintained by the recipient and the proposed business certification and the penalties if a business fails to meet the certification.

#### VI. Findings and Certifications

##### Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The current OMB control number for the CDBG Entitlement program is 2506–0077. The current OMB control number for the CDBG States program is 2506–0085. These information collection numbers will be revised to include the information burden projected in this proposed rule.

The burden of the information collections in this proposed rule is estimated as follows:

##### Reporting and Recordkeeping Burden

| Section reference                                                        | Number of parties | Number of responses per respondent | Estimated average time for requirement (in hours) | Estimated annual burden (in hours) |
|--------------------------------------------------------------------------|-------------------|------------------------------------|---------------------------------------------------|------------------------------------|
| \$ 570.200(e) and \$ 570.506(c) (Maintenance of Required Documentation): |                   |                                    |                                                   |                                    |
| Local .....                                                              | 337               | 1                                  | .333                                              | 112                                |
| Federal .....                                                            | 100               | 1                                  | .5                                                | 50                                 |
| \$ 570.210(c) (Statement):                                               |                   |                                    |                                                   |                                    |
| Local .....                                                              | 337               | 1                                  | 2                                                 | 674                                |
| Federal .....                                                            | 40                | 1                                  | 1                                                 | 40                                 |
| \$ 570.482(h)(3) (Statement):                                            |                   |                                    |                                                   |                                    |
| Local .....                                                              | 51                | 1                                  | 2                                                 | 102                                |
| Federal .....                                                            | 10                | 1                                  | 2                                                 | 20                                 |
| Total Local Reporting and Recordkeeping Burden (Hours) .....             |                   |                                    |                                                   | 888                                |
| Total Federal Reporting and Recordkeeping Burden (Hours) .....           |                   |                                    |                                                   | 110                                |

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4556) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,  
Office of Management and Budget, New  
Executive Office Building, Washington, DC  
20503;  
and

Sheila Jones, Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing & Urban Development, 451 7th Street, SW, Room 7232, Washington, DC 20410.

##### Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the

Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. HUD, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way that is less burdensome to them.

#### *Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

#### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the

Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs in covered by this proposed rule are as follows:

- Community Development Block Grant entitlement program—14.218;
- State CDBG program—14.228;
- HUD Small Cities CDBG program—14.219;
- Economic Development Initiative & Brownfields Economic Development Initiative programs—14.246
- Section 108 Loan Guarantee program—14.248
- Insular Areas—14.225.

#### **List of Subjects in 24 CFR Part 570**

Administrative practice and procedure, American Samoa, Community development block grant, Grant programs—education, Grant programs—housing and community development, Guam Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 570 as follows:

#### **PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

1. The authority citation for part 570 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5301–5320.

2. Revise the third sentence of § 570.200(e) to read as follows:

#### **§ 570.200 General policies.**

\* \* \* \* \*

(e) \* \* \* A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

\* \* \* \* \*

3. Add § 570.210 to read as follows:

#### **§ 570.210 Prohibition on use of assistance for employment relocation activities.**

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

- (i) § 570.203(b);
- (ii) § 570.204(a)(2); or
- (iii) §§ 570.201(a), 570.201(b), 570.201(c), 570.201(d), 570.201(l), 570.203(a), or § 570.204 when the grantee, subrecipient, or (in the case of an activity carried out pursuant to § 570.204) a Community Based Development Organization enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA.

(2) *Labor market area (LMA).* An LMA is an area defined by the U.S. Bureau of Labor Statistics. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. Grantees must use employment data, as defined by the U.S. Bureau of Labor Statistics, for the LMA in which the affected business is currently located and from which current jobs may be lost.

(3) *Operation.* A business operation includes any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* A loss of jobs is significant if the number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent (.1%) of the total number of persons in the labor force. In all cases, however, a loss of 500 or more jobs constitutes a significant job loss.

(c) *Statement.*—(1) *General.* A written agreement with a for-profit entity that receives direct assistance covered by this section must include a statement as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another.

(2) *Required information.* If applicable, the agreement shall identify the for-profit entity's:

(i) Current plant(s), facility(ies), and operation(s);

(ii) The number of jobs that currently exist at each plant, facility, and operation; and

(iii) The number of jobs that will exist at each plant, facility, and operation once the assisted facility is fully operational.

(3) *Reimbursement of assistance.* In the event that assistance results in a relocation prohibited under this section, the agreement shall provide for reimbursement to the recipient of any assistance (with interest) provided to, or expended on behalf of, the for-profit entity.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 U.S.C. 4601–4655);

(2) *Microenterprises.* Assistance to microenterprises eligible under § 570.201(o);

(3) *Start-up businesses.* Assistance to a start-up business (*i.e.*, a business that does not have an operating history before receiving CDBG assistance); and

(4) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and produces a significant loss of jobs in the LMA from which the relocation occurs.

4. Add § 570.482(h) to read as follows:

**§ 570.482 Eligible activities.**

\* \* \* \* \*

(h) *Prohibition on use of assistance for employment relocation activities—*

(1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(2) *Definitions.* The following definitions apply to the paragraph:

(i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974, as amended. Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7) and (14), of the Housing and Community Development Act of 1974, as amended, when the grantee enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA.

(ii) *Labor market area (LMA).* An LMA is an area defined by the U.S. Bureau of Labor Statistics. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. Grantees must use employment data, as defined by the Bureau of Labor Statistics, for the LMA in which the affected business is currently located and from which current jobs may be lost.

(iii) *Operation.* A business operation includes any equipment, employment opportunity, production capacity or product line of the business.

(iv) *Significant loss of jobs.* A loss of jobs is significant if the number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent (.1%) of the total number of persons in the labor force. In all cases, however, a loss of 500 or more jobs constitutes a significant job loss.

(3) *Statement—(i) General.* A written agreement with a for-profit entity that receives direct assistance covered by this paragraph must include a statement as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another.

(ii) *Required information.* If applicable, the agreement shall identify the for-profit entity's:

(A) Current plant(s), facility(ies), and operation(s);

(B) The number of jobs that currently exist at each plant, facility, and operation; and

(C) The number of jobs that will exist at each plant, facility, and operation

once the assisted facility is fully operational.

(iii) *Reimbursement of assistance.* In the event that assistance results in a relocation prohibited under this paragraph, the agreement shall provide for reimbursement to the recipient of any assistance (with interest) provided to, or expended on behalf of, the for-profit entity.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 U.S.C. 4601–4655);

(ii) *Microenterprises.* Assistance to microenterprises eligible under § 570.201(o);

(iii) *Start-up businesses.* Assistance to a start-up business (*i.e.*, a business that does not have an operating history before receiving CDBG assistance); and

(iv) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and produces a significant loss of jobs in the LMA from which the relocation occurs.

5. Revise § 570.506(c) to read as follows:

**§ 570.506 Records to be maintained.**

\* \* \* \* \*

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

\* \* \* \* \*

Dated: September 29, 2000.

**Cardell Cooper,**

*Assistant Secretary for Community Planning and Development.*

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